

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
Minute Order

Hearing Information:

ADV: 09-90009

EDUARDO GONZALEZ & MONICA GONZALEZ VS LIZBETH MORENO

Debtor: LIZBETH MORENO

Case Number: 08-11204-LA7

Chapter: 7

Date / Time / Room: THURSDAY, MARCH 19, 2009 02:30 PM DEPARTMENT 2

Bankruptcy Judge: LOUISE DeCARL ADLER

Courtroom Clerk: KAREN FEARCE

Reporter / ECR: TRISH CALLIHAN

Matter:

DEFENDANT'S MOTION TO DISMISS COMPLAINT FILED BY ISSA ABUAIGA ON BEHALF OF LIZBETH MORENO.

Appearances:

ANDREW H. GRIFFIN, ATTORNEY FOR EDUARDO GONZALEZ, MONICA GONZALEZ
ISSA ABUAITA, ATTORNEY FOR LIZBETH MORENO

Disposition:

Motion to Dismiss GRANTED as follows:

1. Motion to dismiss 2nd, 3rd and 5th claims for relief GRANTED WITHOUT LEAVE TO AMEND. Even if these claims are true, they do not state conduct which could serve as the basis for a nondischargeability claim under any section of 11 USC 523(a).
2. Motion to dismiss 1st claim for relief GRANTED WITH LEAVE TO AMEND. The facts as alleged do not state an exception to discharge under Sec. 523(a)(2)(B); however, plaintiff may be able to state a cause of action under Sec. 523(a)(2)(A) provided plaintiff can allege with particularity facts and circumstances constituting fraud. Further, court understands that plaintiff had a month-to-month tenancy; consequently, any fraudulent statements allegedly made by defendant has to have induced plaintiff to move into the premises. Such statement cannot constitute the basis for fraud in successive months when, presumably, plaintiffs were aware of the true facts and condition of the premises and continued to stay.
3. Motion to dismiss Sec. 523(a)(6) claim GRANTED WITH LEAVE TO AMEND. Plaintiff must state with more particularity the willful and malicious conduct, as defined by 9th Cir. precedent, that gives rise to nondischargeability under this section.
4. Motion to dismiss Sec. 523(a)(7) claim GRANTED WITH LEAVE TO AMEND.

In Court Disposition- Tentative item #4- motion to be filed by 4/3. Order to be Lodged by Mr. Abuaita